

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14244 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

AMBALAL FULABHAI AMIN THROUGH LEGAL HEIRS AMBBALAL F AMIN

Versus

COMPETENT AUTHORITY AND ADDL COLLECTOR(ULC)

Appearance:

MR PB MAJMUDAR for Petitioner

MR.A.G.URAIZEE,Assistant Government Pleader for the Respondents.

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 26/03/96

ORAL JUDGEMENT

Rule. Mr. Uraizee ,learned Assistant Government Pleader appears and waives service for the respondents. With the consent of the learned advocates of parties, Rule is heard today.

The petitioner has challenged the order passed by respondent No.1 -competent authority and Additional Collector (ULC) at Baroda dated 20.10.1983 as well as the order passed by the Gujarat Revenue Tribunal on 21.6.1988 in Appeal no. 276 of 1983e.

The learned advocate for the petitioner raised the first contention that the authorities below have committed a serious error of law in treating the land beneath the super-structure as vacant land. Thus, it is submitted that the built up land ought to have been excluded from the expression "vacant land". This submission is rightly not disputed on behalf of the respondents. It is explicit from the impugned orders that the authorities below have not considered the real sense of expression "vacant land" given in the Urban Land (Ceiling and Regulation) Act, 1976 ('ULC Act' for short). It is a settled proposition of law that if the construction of a building with dwelling unit therein had begun on or before the appointed day, then in that case, the built up land or land over which the super-structure is raised cannot be said to be vacant land for the purpose of total holding. The present case is squarely covered by the decision of the Supreme court rendered in Smt. Meera Gupta vs. State of West Bengal, AIR 1992, SC.1567. Thus, it becomes clear that the land on which the construction is raised on or before the appointed day has to be excluded from the definition of 'vacant land' which has not been done by the competent authority and the Tribunal in the impugned orders. Therefore, the matter is required to be remanded back for fresh hearing, consideration and computation.

In the result, the petition is allowed. The impugned orders are quashed and set aside. The matter is remanded back to the Tribunal for fresh inquiry, hearing and computation, as early as possible. Rule is made absolute to the aforesaid extent, with no order as to costs.
